

UNITED STATES OF AMERICA  
WESTERN DISTRICT OF NEW YORK

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JUAN URRUTIA,

Plaintiff,

DECISION AND ORDER  
05-CV-6153 CJS

vs.

GARY GREENE,

Defendant.

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On May 22, 2007, U.S. Magistrate Judge Victor Bianchini filed a report and recommendation with regard to petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The report and recommendation was sent to petitioner, and contained the following language:

The parties are reminded that, pursuant to Rule 72.3(a)(3) of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." Failure to comply with the provisions of Rule 72.3(a)(3), or with the similar provisions of Rule 72.3(a)(2) (concerning objections to a Magistrate Judge's Decision and Order), may result in the District Court's refusal to consider the objection.

(Report and Recommendation at 13.) On June 4, 2007, petitioner filed a request seeking an enlargement of time in which to respond to the Answer, which was filed on May 23, 2005. As grounds for his enlargement request, he stated that he did not realize until recently that he could respond to the Answer and indicated that he did not speak or understand English.

Petitioner had ample notice of his ability to respond to the Answer. In the Order docketed on April 11, 2005, granting Petitioner *in forma pauperis* status, and directing

respondent to answer, U.S. District Judge David Larimer stated "[i]f petitioner chooses to file a written response to the answer and memorandum of law, he should file the response within sixty (60) days of the receipt of the answer." (Order (Apr. 11, 2005) at 2.)

Petitioner's inability to speak English was addressed by Magistrate Judge Bianchini. On April 10, 2007, after the Court had referred this case to Magistrate Judge Bianchini, Petitioner requested the appointment of *pro bono* counsel and in his request stated, *inter alia*, that he did not speak or read English very well. Magistrate Judge Bianchini denied his request in a Decision and Order docketed on April 12, 2007, and addressed all the bases for Petitioner's request in a well-reasoned decision, from which Petitioner did not appeal.

In view of the lack of timeliness of petitioner's latest request, his lack of objection to the Report and Recommendation, and Magistrate Judge Bianchini's finding that "[i]ndeed, the evidence against petitioner was compelling[.]" the Court denies his request for an enlargement. Further, the Court adopts Magistrate Judge Bianchini's Report and Recommendation in full. Accordingly, it is hereby,


ORDERED, that Petitioner's request (# 15) for an enlargement of time to respond to Respondent's Answer is denied; and it is further

ORDERED, that Petitioner's petition (# 1) for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, is denied.

It is So Ordered.

DATED: August 27, 2007  
Rochester, New York

ENTER.

  
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CHARLES J. SIRAGUSA  
United States District Judge